

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 05-11805-NMG
v.	:	
	:	
RICHARD F. SELDEN,	:	
	:	
Defendant.	:	
----- X		
RICHARD F. SELDEN,	:	
	:	
Plaintiff,	:	Civil Action
	:	No. 06-11807-NMG
v.	:	
	:	
UNITED STATES FOOD AND DRUG	:	
ADMINISTRATION and ANDREW C.	:	
VON ESCHENBACH, in his official	:	
capacity as acting commissioner of the	:	
United States Food and Drug	:	
Administration,	:	
	:	
Defendants.	:	
----- X		

**RICHARD F. SELDEN’S CROSS-MOTION  
TO PRECLUDE ADMISSION OF FDA EVIDENCE**

Pursuant to Federal Rules of Civil Procedure 1, 16, 26 and 37, the Local Rules of this Court, and this Court’s inherent authority to ensure the just, speedy and fair disposition of these actions, defendant-plaintiff Richard F. Selden (“Dr. Selden”), by his undersigned counsel, respectfully cross-moves this Court on the Motion To Dismiss For Lack Of Jurisdiction filed in Selden v. FDA, et al. by defendants the United States Food and Drug Administration and Andrew C. von Eschenbach, in his official capacity as

acting commissioner of the FDA (collectively, "FDA") (Docket No. 12), for the entry of an Order precluding plaintiff the Securities and Exchange Commission ("SEC") from relying on or introducing on dispositive motions or at trial any materials, testimony or other evidence derived or received from the FDA, any of its sub-agencies or departments, or any of its current or former employees. The grounds for this motion are set forth in the accompanying memorandum of law and proposed findings of fact and conclusions of law, respectfully submitted herewith.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Dr. Selden respectfully requests a hearing on this motion.

**CERTIFICATION UNDER LOCAL RULES 7.1(A)(2) AND 37.1**

The undersigned hereby certifies that counsel for Dr. Selden has conferred with counsel for the SEC and FDA to narrow the issues on this motion.

Dated: October 27, 2006

/s/ Justin J. Daniels  
Justin J. Daniels

Dated: October 27, 2006  
Boston, Massachusetts

Respectfully submitted,

/s/ Thomas J. Dougherty  
Thomas J. Dougherty (BBO #132300)  
Justin J. Daniels (BBO #656118)  
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Counsel for Richard F. Selden

**CERTIFICATE OF SERVICE**

I, Justin J. Daniels, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 27, 2006.

Dated: October 27, 2006 /s/ Justin J. Daniels  
Justin J. Daniels